

### **REMARKS**

Claims 1-39 are currently pending. Claims 1-32 are rejected. Claims 1-7, 10-12, 15-20, 23, 25-26, 29 and 32 have been amended to recite sheephead minnow or large mouth bass. Reference to homologs has been deleted in claims 1-7, 23 and 32. Support for these amendments is found throughout the specification. No new matter has been added by virtue of this amendment and entry is respectfully requested. These amendments were made solely for purposes of expediting prosecution and are not meant to be construed as surrender of any subject matter. Applicants do not necessarily agree with or acquiesce in these rejections. Applicants reserve the right to further prosecute the subject matter in one or more Divisional or Continuation applications.

### ***Claim Objections***

Claims 1-32 are objected to because they specifically recite non elected subject matter. Applicants, in response to the restriction requirement filed December 22, 2005 indicated the combination of SEQ ID NO's necessary for carrying out the methods of the invention, that is, "detecting the presence of an agent having estrogenic or androgenic activity in a sample" (see, claim 1). SEQ ID NO's: 146, 148, 149, 166, 167, 178, 194, 199, 200, 207, 285, 347, 424, 489, 505, 509, 516, 519, 532-534, 542, 545, 551, and 529 are important for determining whether there is estrogen activity and the results are compared to SEQ ID NO's: 14, 15, 25, 28, 30, 42, 44, 47, 52, 61, 62, 71, 558, and 555 which detect androgenic activity. Both sets are required to determine whether an agent is estrogenic, and if, not whether it is androgenic and *vice versa*. That is, the results would confirm, based on these SEQ ID NO's: whether there is any estrogenic or androgenic activity or none of either. A negative result of one activity (e.g. estrogenic) would not necessarily mean that the other activity (e.g. androgenic) would be positive. The above-combination indicates that at least one gene is detected from either or both of the estrogenic and/or androgenic. Thus, both sets of SEQ ID NO's: are required.

In view thereof, Applicants respectfully request reconsideration and withdrawal of the instant objection.

***Claim Rejections Under 35 U.S.C. § 112***

Claims 1-32 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicants respectfully traverse. Applicants recite, in the claims as amended: “expression of at least...gene(s) each being encoded by a nucleotide sequence selected from the group consisting of ....” As such it would be clear to one of skill in the art or a would-be infringer that one SEQ ID NO: represents one different gene as set out in the sequence listing.

In view thereof, Applicants respectfully request reconsideration and withdrawal of the instant rejection.

***Claim Rejections Under 35 U.S.C. § 112- Scope of Enablement***

Claims 1-7 and 10-32 are rejected under 35 U.S.C. § 112, first paragraph. The Examiner asserts that the specification while being enabling for a method of detecting estrogenic or androgenic activity in a sample comprising sheepshead minnow or large mouth bass fish cells, the specification is not reasonably enabling for any type of fish species or detection of genes partially encoded. Applicants respectfully traverse. However, in order to expedite and compact prosecution, Applicants have amended the claims as per the Examiner’s suggestion on page 6 and 7 of the office action. No new matter has been added by virtue of these amendments and entry is respectfully requested. The amendment of the claims is solely for responding to this office action and by such amendments, Applicants are not surrendering any subject matter. Applicants hereby reserve the right to pursue the amended subject matter in one or more continuation or divisional applications.

In view thereof, Applicants respectfully request reconsideration and withdrawal of the instant rejection.

***Claim rejections- 35 U.S.C. § 112-Written Description***

Claims 1-7 and 10-32 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Applicants respectfully traverse. However, in order to expedite and compact prosecution, Applicants have amended the claims as per the Examiner's suggestion on page 6 and 7 of the office action. No new matter has been added by virtue of these amendments and entry is respectfully requested. The amendment of the claims is solely for responding to this office action and by such amendments, Applicants are not surrendering any subject matter. Applicants hereby reserve the right to pursue the amended subject matter in one or more continuation or divisional applications.

In view thereof, Applicants respectfully request reconsideration and withdrawal of the instant rejection.

***Claim Rejections Under 35 U.S.C. § 102***

Claims 1-7, 9-24 and 30-32 were rejected under 35 U.S.C. § 102(b) as being anticipated by Larkin et al (Marine Environmental Research 2002 (available online May 24, 2002) Volume 54 p. 395).

Applicants respectfully traverse. However, in order to expedite and compact prosecution, Applicants have amended the claims as per the Examiner's suggestion on page 6 and 7 of the office action. No new matter has been added by virtue of these amendments and entry is respectfully requested. The amendment of the claims is solely for responding to this office action and by such amendments, Applicants are not surrendering any subject matter. Applicants hereby reserve the right to pursue the amended subject matter in one or more continuation or divisional applications. As such, the cited reference fails to teach each and every claim limitation and therefore, fails to anticipate the instant invention.

In view thereof, Applicants respectfully request reconsideration and withdrawal of the instant rejection.

**CONCLUSION**

Applicants respectfully request entry of the foregoing remarks and reconsideration and withdrawal of all rejections. It is respectfully submitted that this application with claims 1-32 define patentable subject matter and is in condition for allowance. Accordingly, Applicant respectfully requests allowance of these claims.

If there are any remaining issues or the Examiner believes that a telephone conversation with the Applicants' attorney would be helpful in expediting prosecution of this application, the Examiner is invited to call the undersigned at telephone number shown below.

This response is being filed with a petition for a one month extension of time and the required fee. Although, Applicants believe that no extensions of time or fees are required with submission of this paper, Applicants request that this submission also be considered as a petition for any extensions of time if necessary. The Commissioner for Patents and Trademarks is hereby authorized to charge the amount due for any retroactive extensions of time and any deficiency in any fees due with the filing of this paper or credit any overpayment in any fees paid on the filing or during prosecution of this application to Deposit Account No. 50-0951.

Respectfully submitted,



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